

REFERENCE TITLE: wildfire suppression; payment of claims

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1290

Introduced by
Senator Nelson

AN ACT

AMENDING SECTIONS 35-192 AND 37-623.02, ARIZONA REVISED STATUTES; RELATING TO WILDLAND FIRE SUPPRESSION REIMBURSEMENT CLAIMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 35-192, Arizona Revised Statutes, is amended to
3 read:

4 35-192. Authorization for declaration of disaster;
5 authorization for liabilities and expenses;
6 priorities and limitations; review and report of
7 expenditures

8 A. The governor may declare an emergency arising from such major
9 disasters as provided in this section and incur liabilities therefor,
10 regardless of whether or not the legislature is in session.

11 B. When the governor, or the director of the division of emergency
12 management in the department of emergency and military affairs pursuant to
13 section 26-303, subsection H, determines that a contingency or disaster so
14 justifies, and declares an emergency, specific liabilities and expenses
15 provided for in this section are authorized to be incurred against and to be
16 paid as claims against the state from unrestricted monies from the general
17 fund to mitigate and meet contingencies and emergencies arising from:

- 18 1. Invasions, hostile attacks, riots or insurrections.
- 19 2. Epidemics of disease or plagues of insects.
- 20 3. Floods or floodwaters.
- 21 4. Acts of God or any major disaster.
- 22 5. ~~Wild~~ land WILDLAND fires, but only after all necessary
23 authorizations under section 37-623.02 are exhausted.

24 C. When authorized by the governor, specific liabilities and expenses
25 provided for in this section may be incurred against and may be paid as
26 claims against the state from unrestricted monies from the general fund to
27 meet contingencies and emergencies arising from incidents relating to
28 hazardous materials as defined in section 26-301 and search or rescue
29 operations conducted pursuant to section 11-251.02, section 11-441,
30 subsection C or section 26-306 subject to the limitations provided in section
31 35-192.01.

32 D. Liabilities and expenses authorized under ~~the provisions of~~
33 subsection B of this section may be incurred for any of the emergencies or
34 contingencies prescribed in subsection B of this section in the following
35 order of priority:

- 36 1. Reimbursement for expenses incurred to combat a menace to the
37 health, lives or property of any considerable number of persons of the state,
38 or to property of the state or its political subdivisions.
- 39 2. Reimbursement for expenses incurred to repair damage to any
40 property of the state.
- 41 3. Reimbursement for expenses incurred to repair damage to any
42 property of the political subdivisions of the state.
- 43 4. Reimbursement for expenses incurred in search or rescue operations.
- 44 5. Reimbursement for expenses incurred in emergency or disaster
45 recovery activities or in matching federal disaster recovery programs.

1 6. Reimbursement for expenses for property loss mitigation measures or
2 to match federal property loss mitigation programs.

3 E. The auditor of the department of emergency and military affairs
4 shall review liabilities incurred and expenditures made under this section
5 and report to the state emergency council at ninety day intervals during the
6 emergency and conduct a final review of each emergency within ninety days
7 after the termination of the emergency. The state emergency council shall
8 make a written report not later than August 1 of each year to the legislature
9 of the actions of the state emergency council during the preceding fiscal
10 year including an itemized statement of expenditures for each emergency
11 during the year.

12 F. All liabilities incurred under ~~the provisions of~~ this section shall
13 be subject to the following limitations:

14 1. IF THE GOVERNOR HAS DECLARED AN EMERGENCY ARISING FROM A WILDFIRE
15 OCCURRING IN WHOLE OR IN PART ON NONFEDERAL LANDS AND IF MONIES AVAILABLE
16 PURSUANT TO SECTION 37-623.02 HAVE BEEN EXHAUSTED, PROPER CLAIMS FOR COSTS OF
17 WILDLAND FIRE SUPPRESSION SERVICES SHALL BE PAID WITHIN THIRTY DAYS PURSUANT
18 TO THIS SECTION FROM ANY AVAILABLE MONIES THAT HAVE NOT BEEN PREVIOUSLY
19 COMMITTED FOR THE PAYMENT OF ANY OTHER SPECIFIC EMERGENCY EXPENDITURE.

20 ~~1.~~ 2. EXCEPT AS PROVIDED BY PARAGRAPH 1 OF THIS SUBSECTION, no
21 liability shall be incurred against the monies authorized without the
22 approval of the governor, or the adjutant general pursuant to section 26-303,
23 subsection H, for each contingency or emergency.

24 ~~2.~~ 3. EXCEPT AS PROVIDED BY PARAGRAPH 1 OF THIS SUBSECTION, incurring
25 of liabilities in excess of two hundred thousand dollars in any single
26 disaster or emergency shall not be made without consent of a majority of the
27 members of the state emergency council.

28 ~~3.~~ 4. The aggregate amount of all liabilities incurred under ~~the~~
29 ~~provisions of~~ this section shall not exceed four million dollars for
30 any fiscal year beginning July 1 through June 30. Monies authorized for
31 disasters and emergencies in prior fiscal years may be used in subsequent
32 fiscal years only for the disaster or emergency for which they were
33 authorized. Monies authorized for disasters and emergencies in prior fiscal
34 years, and expended in subsequent fiscal years for the disaster or emergency
35 for which they were authorized, apply toward the four million dollar
36 liability limit for the fiscal year in which they were authorized.

37 ~~4.~~ 5. An obligation of monies under ~~the provisions of~~ this section
38 may be made only when one or more of the following conditions exist:

39 (a) No appropriation or other authorization is available to meet the
40 contingency or emergency.

41 (b) An appropriation is insufficient to meet the contingency or
42 emergency.

43 (c) Federal monies available for such contingency or emergency require
44 the use of state or other public monies.

1 G. The director of the division of emergency management in the
2 department of emergency and military affairs shall develop rules for
3 administering the monies authorized for liabilities under this section,
4 subject to approval by the governor.

5 Sec. 2. Section 37-623.02, Arizona Revised Statutes, is amended to
6 read:

7 37-623.02. **Emergencies; prohibiting fireworks; liabilities and**
8 **expenses; fire suppression revolving fund**

9 A. On request of the state forester, the governor may authorize the
10 state forester to incur liabilities for suppressing wildland fires and
11 responding to other unplanned all risk activities from unrestricted monies in
12 the state general fund whether or not the legislature is in session.

13 B. The state forester has the authority to prohibit the use of
14 fireworks during times of high fire potential in the unincorporated areas of
15 the state.

16 C. The state forester or the state forester's designee shall review
17 all liabilities incurred and expenditures made under this section and shall
18 report the expenditures to the department of administration for audit
19 according to department of administration rules. The state forester shall
20 transmit a copy of the report to the state emergency council.

21 D. Liabilities incurred under this section are subject to the
22 following limitations:

23 1. Wildland fire suppression or other unplanned all risk emergency
24 liabilities shall not exceed three million dollars of state general fund
25 monies pursuant to subsection A of this section in a fiscal year for costs
26 associated with suppressing wildland fires, supporting other unplanned all
27 risk activities such as fire, flood, earthquake, wind and hazardous material
28 responses and ~~to prepare~~ PREPARING for periods of extreme fire danger and
29 pre-position equipment and other fire suppression resources to provide for
30 enhanced initial attack on wildland fires. The state forester shall not
31 incur nonreimbursable liabilities for support of nonfire all risk activities.
32 The governor shall determine when periods of extreme fire danger exist and
33 must approve any expenditure for pre-positioning activities.

34 2. If the funding authorization in paragraph 1 OF THIS SUBSECTION is
35 exhausted, or if the nonreimbursable liabilities incurred exceed the cash
36 balance of the fire suppression revolving fund, the state forester shall not
37 incur additional liabilities without the consent of a majority of the state
38 emergency council as authorized by section 35-192, EXCEPT AS PROVIDED IN
39 SECTION 35-192, SUBSECTION F, PARAGRAPH 2.

40 E. THE STATE FORESTER SHALL PROCESS AND PAY CLAIMS FOR REIMBURSEMENT
41 FOR WILDLAND FIRE SUPPRESSION SERVICES AS FOLLOWS:

42 1. EXCEPT AS PROVIDED BY PARAGRAPH 2 OF THIS SUBSECTION, WITHIN THIRTY
43 DAYS AFTER RECEIVING A COMPLETE AND CORRECT CLAIM FOR WILDLAND FIRE
44 SUPPRESSION SERVICES, THE STATE FORESTER SHALL PAY THE CLAIM.

1 2. WITHIN THIRTY DAYS AFTER RECEIVING A COMPLETE AND CORRECT CLAIM FOR
2 WILDLAND FIRE SUPPRESSION SERVICES ON FEDERAL LANDS, THE STATE FORESTER SHALL
3 COMPLETE THE PROCESSING OF THE CLAIM AND FORWARD THE CLAIM TO THE APPROPRIATE
4 FEDERAL AGENCY.

5 ~~F.~~ F. No later than December 31 of each year the state forester shall
6 submit a report to the joint legislative budget committee and the governor
7 detailing the specific uses of all monies authorized to be expended from the
8 fire suppression revolving fund and any additional monies authorized by the
9 governor to prepare for periods of extreme fire danger and pre-position
10 equipment and other fire suppression resources to provide for enhanced
11 initial attack on wildland fires.

12 ~~F.~~ G. Monies received for suppressing wildland fires, pre-positioning
13 equipment and firefighting resources and other unplanned all risk activities
14 may be used for the purposes of section 37-623 and this section.

15 ~~G.~~ H. The state forester shall adopt rules for administering the
16 wildland fire suppression monies authorized under this section, subject to
17 approval of the governor.

18 ~~H.~~ I. The state forester may require reimbursement from cities and
19 other political subdivisions of this state and state and federal agencies for
20 costs incurred in the suppression of wildland fires, pre-suppression or
21 unplanned all risk activities. Reimbursement shall be based on the terms and
22 conditions in cooperative agreements, land ownership or negligence. The
23 state forester may require reimbursement from individuals or businesses only
24 for costs incurred in the suppression of wildland fires or unplanned all risk
25 activities caused by their negligence or criminal acts.

26 ~~I.~~ J. A fire suppression revolving fund is established for deposit of
27 monies received by the state forester for wildland fire suppression and
28 pre-positioning equipment and resources and for payment for activities
29 related to combating wildland fires and supporting other unplanned all risk
30 activities such as fire, flood, earthquake, wind and hazardous material
31 responses. The state forester shall not incur nonreimbursable liabilities
32 for support of nonfire all risk activities. The state forester shall
33 administer the fund, and all monies received for these activities shall be
34 deposited, pursuant to sections 35-146 and 35-147, in the fund. Monies in
35 the fire suppression revolving fund are continuously appropriated to the
36 state forester, except that if the unobligated balance of the fund exceeds
37 two million dollars at the end of any calendar year, the excess shall be
38 transferred to the state general fund. Monies in the fire suppression
39 revolving fund are otherwise exempt from the provisions of section 35-190
40 relating to lapsing of appropriations.